CONSTITUTIONAL LAW—POLICE POWER—REGULATION OF SHEEP HERDING.—SWEET V. BALLENTINE, 69 PAC. 995 (IDAHO).—*Held,* statutes prohibiting the grazing and herding of sheep within two miles of inhabited dwellings, are valid police regulations. Affirming *Sifers v. Johnson,* 65 Pac. 709 (Idaho).

No such law as this appears to exist in any other State. Apparently the only authority on the subject is *2 Tied., Fed. Con. of Pers. and Prop.* p. 838: "The clash of interests between stock-raising and farming calls for the interference of the State by the institution of police regulations; and whether the regulations shall subordinate the stock-raising interest to that of farming, or vice versa, is a matter for the legislative discretion, and is not a judicial question." Stockslager, J., strongly dissents, and holds that to give one citizen an advantage over another in the mere matter of the use of public domain, or in mere matter of general privileges and advantages, is an unconstitutional discrimination.

CUSTOMS DUTIES—IMPORTATIONS FROM ALGERIA—QUESTION FOR THE COURTS.—TARTAR CHEMICAL CO. V. UNITED STATES, 116 FED. 726.—The board of general appraisers connected with the State Department had decided, contrary to the evidence furnished by the French government, that Algeria is not a part of France, but simply a French colony and not within the scope of the reciprocal commercial agreement between France and the United States. On appeal, *held,* that this is a judicial question for the courts and not a political one on which the determination of an executive department is conclusive.

It is clear that section 15 of the Customs Administrative Act, 26 U. S. Stat. 137, under which jurisdiction is claimed to try cases on appeal from the board of appraisers, does not apply to "political" questions, which have always been held to be under the control of the executive branch of the government. *Marbury v. Madison,* 1 Cranch 137, 170. The jurisdiction of the court then depends entirely upon whether this question is political or not, and on this point it is difficult to see the correctness of this decision. As is admitted in the opinion, if there was any dispute as to the boundaries or sovereignty of a foreign state, it would be a political question. *Foster v. Neilson,* 2 Pet. 253; *Guadalupe Co. v. Wilson Co.,* 58 Tex. 228. So also if it were a question of the recognition of a foreign state. *Luther v. Borden,* 7 Howard 1. "Nor is it material to inquire, nor the province of the court to determine whether the executive be right or wrong." *Williams v. Ins. Co.,* 13 Pet. 415. Just what questions are "political" has never been judicially determined, and the opinion in the present case holds that the questions involved in such cases as those described above are political, only because connected with some dispute between States. But if questions concerning the boundaries of States be political, 1 *Wharton on Internat. Law* 551, it is hard to see why the decision as to whether a certain territory is a separate colony or an integral part of a foreign state, is not also political; and though there is no open dispute in the present case, there is a distinct difference of opinion as to the status of Algeria. The reasoning on which the exclusive jurisdiction of the executive over political questions is based would seem to apply. See *Williams v. Ins. Co.,* 13 Pet. 415; *Foster v. Neilson,* 2 Pet. 253.

GIFTS—CAUSA MORTIS—PUBLIC POLICY.—DENEFF V. HELMS, 70 PAC. 390 (ORE.).—Testator just previous to his death, and in expectation of it, de-

livered a sum of money to defendant, directing him to care for testator till death, then pay his debts, compensate himself for his services, and turn over the remainder to testator's sister. *Held* to be a valid gift *causa mortis* and not assets recoverable by plaintiff, testator's administrator.

The plaintiff contended that this was an attempted testamentary disposition and that defendant was a mere agent. But the court held defendant to be a trustee for testator's sister. As to the right to couple a gift *causa mortis* with a trust without defeating the gift see *Ellis v. Secor,* 31 Mich. 185; *Curtiss v. Sav. Bank,* 77 Me. 15; *Clough v. Clough,* 177 Mass. 85; *Laucks v. Johnson,* 70 Hun. 565; *Hills v. Hills,* 8 M. & W. 401; *Schoul., Pers. Prop.* (2nd ed.) Sec. 195; *Schoul., Wills,* Sec. 271.

ILLEGITIMATE CHILD—TRANSFER OF CUSTODY BY MOTHER—VALIDITY.—CUSSET V. EUVRARD, 52 ATL. 1110 (N. J.).—The putative father of illegitimate children took charge of them on an agreement by which the mother transferred to him all rights to their custody. *Held,* that the transfer was valid as against the mother, and being for the interest of the children, would not be set aside.

Contracts for the surrender of the care and custody of children by parents are contrary to public policy. *Copeland v. State,* 60 Ind. 394; *People v. Mercein,* 3 Hill (N. Y.) 399. A lawful father cannot by agreement with the mother divest himself of the custody of his child. *Johnson v. Terry,* 34 Conn. 259; *People v. Mercein, supra.* Nor can he deprive her of her rights by agreement. *Moore v. Christian,* 56 Miss. 408; *State v. Reuff,* 29 W. Va. 751. But where such contracts have been made, courts may, for the benefit of the child, refuse to set them aside. *Chapsky v. Wood,* 26 Kan. 650. In regard to the child "the court will not exchange a certainty for an uncertainty." *Drummond v. Ashton,* 8 W. N. C. (Pa.) 563; *Bryan v. Lyon,* 104 Ind. 227. In the case of illegitimate children the putative father has no right to custody as against the mother. *Pratt v. Nitz,* 48 Iowa 33; *People v. Kling,* 6 Barb. (N. Y.) 366.

INJUNCTION—AGREEMENT NOT TO OPPOSE.—NATIONAL PHONOGRAPH CO. V. SCHLEGEL, 117 FED. 624.—Complainant applied for a perpetual injunction and defendants signified in writing their consent to its issuance. The object of the transaction was to use the injunction to intimidate others in positions similar to that of the defendants. *Held,* that the writ should not issue.

In *American Co. v. Vail,* 15 Blatch. 315, apparently the only similar case on record, the injunction asked was granted, but with the specification that no judgment was passed on the merits of the controversy. The Supreme Court, in *Ford v. Teazie,* 8 How. 251, has ruled that a judgment in a suit at law where there is no real contest is a "nullity." The same principles apply still more strongly in the case of injunctions, which lie, not as of right, but in the discretion of the court; *Wormser v. Brown,* 149 N. Y. 163; *Story, Eq. Jur., 10th ed.,* 959a; and the use of which should be carefully guarded. *Atty.-Gen. v. Utica Ins. Co.,* 2 Johns. Ch. 370; *Story, Eq. Jur.,* 959b.

INJUNCTION—PICKETING.—FOSTER ET AL. V. RETAIL CLERKS' PROTECTIVE ASS'N. ET AL., 78 N. Y. SUPP. 860.—Defendants, sympathizers with a labor union by design and agreement, distributed cards asking union men to keep away from the store of the plaintiffs and sought by picketing the vicinity to